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FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION

FOLLOW-UP TO THE WORLD CONFERENCE ON HUMAN RIGHTS

Note by the United Nations High Commissioner for Human Rights

Addendum

Study of the High Commissioner for Human Rights on procedures for ensuring implementation of, and follow-up to recommendations of special rapporteurs/representatives, experts and working groups

GE.98-17168 (E)

Introduction

1. At the third meeting of special rapporteurs/representatives, experts and chairpersons of working groups of the special procedures of the Commission on Human Rights and of the Advisory Services Programme (hereinafter special rapporteurs), the participants:

(a) Suggested that a study be carried out on the conditions under which the High Commissioner for Human Rights could intervene with a given country to facilitate the follow-up of recommendations by the holders of human rights mandates;

(b) Welcomed the proposal made by the special rapporteurs/ representatives, experts and working groups to cooperate with the High Commissioner for Human Rights in elaboration of a procedure to follow-up its recommendations and decisions;

(c) Requested the High Commissioner to convey suggestions concerning a follow-up procedure to the special rapporteurs/representatives, experts and working groups before their fifth meeting;

(d) Requested its Chairperson or a participant designated by him to seek an early meeting with the new High Commissioner to draw her attention to these and other recommendations aiming at the more effective coordination of the work of the Office of the United Nations High Commissioner for Human Rights and the mandates of participants (see E/CN.4/1997/3, annex para. 70).

2. In view of the lack of follow-up to these recommendations, the fourth meeting reiterated the request for the High Commissioner to prepare a study on the question of follow-up for recommendations of special rapporteurs (see E/CN.4/1998/45, annex, para. 73).

3. The impetus for this request stems from various resolutions of the Commission on Human Rights which called upon thematic special rapporteurs and working groups to establish follow-up procedures. For example, in resolution 1993/47 the Commission invited "the thematic special rapporteurs and working groups to include in their annual reports information provided by Governments on follow-up action, as well as their own observations thereon". More explicitly, resolution 1994/32, renewing the mandate of the Working Group on Arbitrary Detention, requested "the Working Group to submit a report to the Commission, at its fifty-first session, and to make any suggestions and recommendations which would enable it to discharge its task even better, particularly in regard to ways and means of ensuring effective follow-up to its decisions, in cooperation with Governments, and to continue its consultations to that end within the framework of its terms of reference".[1]

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[1]As a follow-up to this resolution, the Working Group proposed the following procedure for following up the Group's decisions:

> "The Working Group suggests that a Government which has been the subject of a Working Group decision deeming a detention to be arbitrary should be requested to inform the Working Group, within four months from the

4. As the United Nations official with principal responsibility for United Nations human rights activities under the direction and authority of the Secretary-General, whose responsibilities, under the mandate established by the General Assembly resolution 48/141, include "coordination of the human rights promotion and protection activities throughout the United Nations system" and "rationalization, adaptation, strengthening and streamlining of the United Nations machinery in the field of human rights with a view to improving its efficiency and effectiveness", the High Commissioner for Human Rights is to play an integral role in the follow-up of recommendations of special rapporteurs. In his first report to the General Assembly, the then-High Commissioner identified "follow-up action of the High Commissioner for recommendations made by special rapporteurs and working groups" as one of the five priority areas where enhanced cooperation and exchange of information in relation to the respective special procedures mandates could be ensured (A/49/36, para. 28 (d)).

5. It is within this context that the present study has been prepared. The purpose of the study is to propose ways of enhancing coordination and cooperation between the High Commissioner and special rapporteurs, and to establish a systematic procedure by which the High Commissioner may follow up their recommendations.

I. RECOMMENDATIONS

A. By special rapporteurs

6. Special rapporteurs make recommendations in their reports to the General Assembly and the Commission on Human Rights, in their communications/urgent actions to Member States and, in the case of the Working Group on Arbitrary Detention, in their views on individual cases. In each case, the recommendations should be brought to the attention of the Office of the High Commissioner as expeditiously as possible by the officer assisting the special rapporteur so that it may take the appropriate action.

1. Reports to the General Assembly and the Commission on Human Rights

7. Each special rapporteur reports to the Commission on Human Rights and, in many cases, to the General Assembly. Upon finalization of the draft report, a summary of the conclusions and recommendations of the special rapporteur should be transmitted to the High Commissioner in the event that they are pertinent for meetings or visits that may be held or undertaken prior

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date of transmittal of the decision, of the measures adopted in compliance with the Group's recommendations. For the time being, it is suggested that this procedure should be applied only in cases in which the prisoner has not been released. Should the Government fail to abide by the Group's recommendations, the Group might proceed to recommend to the Commission on Human Rights that it should request the Government to report to the Commission on the matter, in accordance with the modalities deemed most appropriate by the Commission." (E/CN.4/1995/31, para. 56 (c).)

to the formal release of the report. It must be emphasized that the conclusions and recommendations are to remain confidential until the report is released.

8. With respect to reports on field missions undertaken by special rapporteurs, the same procedure should be followed. However, in certain cases a special rapporteur may issue preliminary observations and recommendations *in situ* at the conclusion of the mission. In these cases, upon return the officer accompanying the special rapporteur should immediately inform the High Commissioner of these preliminary observations and conclusions. Further, the High Commissioner should be informed of any press briefing given or statement issued by the special rapporteur during the course of the mission.

9. It should be borne in mind that the recommendations contained in both general reports and field mission reports may be endorsed by a resolution of the Commission or General Assembly. It is the responsibility of the desk officer to bring these resolutions to the attention of both the concerned special rapporteur and the High Commissioner.

10. In exceptional cases, special rapporteurs may make recommendations in urgent actions or general communications. Although each individual case cannot be brought to the attention of the High Commissioner, in high-profile cases that draw extensive media coverage, she should be informed of such recommendations and may choose to join the special rapporteur in the appeal. By way of example, the High Commissioner issued a press statement joining three special rapporteurs in calling upon the Government of Nigeria to refrain from carrying out the death sentence handed down by a military tribunal (HR/98/32 of 1 May 1998).

2. Views of the Working Group on Arbitrary Detention

11. As is the case of urgent appeals/communications, each individual view of the Working Group cannot be brought to the attention of the High Commissioner. Following each session the Office of the High Commissioner should be informed of country trends that may have emerged, any general recommendations made by the Group and any cases of particular importance which might warrant intervention by the Office.

B. By the High Commissioner

12. As an indispensable element in the United Nations human rights machinery, the High Commissioner views the special rapporteurs as integral partners in the effort to promote and protect human rights. To the Maximum extent possible, the High Commissioner wishes to seek the advice of special rapporteurs concerning issues that fall within the scope of their respective mandates.

13. In certain cases, following consultations with a special rapporteur(s), the High Commissioner may propose certain action by a particular special rapporteur(s). For example, the High Commissioner may suggest, publicly or privately, that a special rapporteur(s) be invited to a particular country, or as mentioned above, that a joint statement be issued by a special rapporteur(s) and herself.

14. More generally, recommendations made by the Office of the High Commissioner in its reports to the General Assembly or the Commission on Human Rights may be of relevance to a special rapporteur(s). It is the responsibility of the desk officer to inform the special rapporteur of recommendations that may be of relevance to his or her work.

C. Commission on Human Rights/General Assembly

15. At each session of the Commission on Human Rights, there is traditionally a series of resolutions generally calling upon the special rapporteurs to take into consideration or integrate certain themes or issues (e.g. gender mainstreaming, human rights and terrorism, etc.). These resolutions should be brought immediately to the attention of the special rapporteurs by the relevant desk officers. The Commission may also adopt resolutions which call for more specific action by a special rapporteur. By way of example, resolution 1996/73 on the situation of human rights in the Sudan suggested that the Special Rapporteurs on freedom of opinion and expression and on religious intolerance visit Sudan. Such resolutions should immediately be brought to the attention of the concerned special rapporteur and the High Commissioner by the relevant desk officer.

II. NATURE OF RECOMMENDATIONS BY SPECIAL RAPPORTEURS

A. To the Office of the High Commissioner for Human Rights

1. To the High Commissioner

16. A special rapporteur, following consultations with the Office of the High Commissioner, may recommend action or intervention by the High Commissioner in a particular situation. The desk officer must inform the High Commissioner immediately of such recommendations. As soon as possible, the Office of the High Commissioner should inform the concerned special rapporteur of the steps taken to implement the recommendation, or the reasons why it was not possible to do so.

2. To field operations

17. Where the special rapporteur recommends certain action to be taken by field operations under the auspices of the High Commissioner, the head of the field office should prepare a report on the feasibility of these recommendations and propose, for the High Commissioner's consideration, a plan to implement them.

3. Technical cooperation and advisory services

18. Special rapporteurs frequently recommend the provision of technical cooperation and/or advisory services to a State. In these cases, the team leader for technical cooperation, or, where appropriate, the head of a field office, should prepare a report on possible implementation of such recommendations.

B. To other United Nations departments or agencies

19. Special rapporteurs may recommend action to be taken by other United Nations departments or agencies, among others the Executive Office of the Secretary-General, the Department of Political Affairs, the Department of Peacekeeping Operations, the Office for the Coordination of Humanitarian Affairs, the United Nations Children's Fund and the Office of the United Nations High Commissioner for Refugees. In these cases, the Office of the High Commissioner should play an integral role in follow-up to ensure that the concerned department or agency has taken into consideration the recommendations of the special rapporteur, and it should provide feedback to the special rapporteur on what actions have been taken and/or what obstacles have been encountered implementing the recommendations.

C. To the concerned State

20. The most common and usually the most important recommendations of special rapporteurs are those made to the concerned States. These may be general or specific in nature. The proposed procedures for the High Commissioner to support these recommendations are described in the following section.

III. FOLLOW-UP TO RECOMMENDATIONS OF SPECIAL RAPPORTEURS

A. Internal follow-up

21. To support the recommendations of special rapporteurs, the High Commissioner might wish to establish a systematic procedure under which the following groups are briefed on their recommendations:

(a) The four Executive Committees of the United Nations;

(b) Other United Nations or specialized agencies (the United Nations High Commissioner for Refugees, the United Nations Children's Fund, the International Labour Organization, etc.);

(c) Special Representatives or envoys of the Secretary-General where relevant;

(d) Treaty bodies;

(e) Field offices;

(f) Voluntary funds.

22. As the reports containing the recommendations of the special rapporteurs are, in general, released immediately prior to or during the sessions of the General Assembly and the Commission on Human Rights, it may be advisable to prepare biannually an executive summary of all recommendations made by special rapporteurs that could be circulated to each of the groups listed above, once in December following the General Assembly and again in May following the session of the Commission on Human Rights.

B. External follow-up

1. States

23. The High Commissioner may choose, following consultation with the relevant special rapporteur, to intervene directly with the State. Each case should be taken on its own merits, taking into consideration various factors including, but not limited to, the urgency of the matter, the gravity of the violations involved, political sensitivity, and the level of international scrutiny. Similarly, the timing of the intervention can only be made on an ad hoc basis. Intervention by the High Commissioner may take the following forms:

(a) Dialogue with the Permanent Representative or Government Representative in Geneva or New York. As a matter of course, prior to meeting a permanent representative or other government official, the High Commissioner should always be briefed on relevant recommendations made by special rapporteurs (or treaty bodies), as well as on requests for missions to the concerned country, so that they may be the subject of discussion. Where appropriate the High Commissioner might wish to speak with the special rapporteur directly as part of her preparation;

(b) Letter to the concerned Minister for Foreign Affairs. Where failure to implement a recommendation of a special rapporteur(s) is cause for serious concern, the High Commissioner may choose to write to the concerned Minister for Foreign Affairs urging immediate implementation;

(c) Visit by the High Commissioner to the country concerned. Prior to country visits by the High Commissioner, she should be fully briefed on relevant recommendations and observations by special rapporteurs. Where the visit is to a country that has denied access to a special rapporteur(s), the agenda of the High Commissioner would include seeking access for the concerned special rapporteur(s). The High Commissioner should also meet or speak with the concerned special rapporteur prior to the visit. With regard to visits, it should be noted that visits of the High Commissioner are not a substitute for visits of special rapporteurs;

(d) Public or press statements. In more serious cases, the High Commissioner may choose to make a public statement calling upon the concerned Government to implement the recommendations of the special rapporteur(s).

2. Regional organizations

24. The Office of the High Commissioner should systematically inform regional human rights organizations of the recommendations of special rapporteurs. The executive summary described above could also be utilized for this purpose. The coordinators of the geographic teams should play an

integral role in this process. Similarly, the special rapporteurs should be kept informed of conclusions and recommendations of regional organizations.

IV. CONCLUSIONS AND RECOMMENDATIONS

25. Any procedure established by the Office of the High Commissioner for Human Rights to support the recommendations of special rapporteurs of the Commission on Human Rights will require enhanced cooperation and coordination on the part of all actors. While this will require a concerted effort, in particular on the part of the Secretariat, the procedures proposed in the present study should help to disseminate the recommendations of the special rapporteurs to a wider audience, especially within other departments and agencies of the United Nations, and should also assist in encouraging States to implement these recommendations fully.